

not agreed upon before performance is begun under the action. Examples are letter contracts, orders under basic ordering agreements, and provisioned item orders, for which the price has not been agreed upon before performance has begun. For policy relating to definitization of change orders, see 243.204-70.

[56 FR 36345, July 31, 1991, as amended at 75 FR 10191, Mar. 5, 2010; 75 FR 48277, Aug. 10, 2010]

217.7402 Exceptions.

(a) The following undefinitized contract actions (UCAs) are not subject to this subpart. However, the contracting officer shall apply the policy and procedures to them to the maximum extent practicable (also see paragraph (b) of this section):

- (1) UCAs for foreign military sales;
- (2) Purchases at or below the simplified acquisition threshold;
- (3) Special access programs;
- (4) Congressionally mandated long-lead procurement contracts.

(b) If the contracting officer determines that it is impracticable to adhere to the policy and procedures of this subpart for a particular contract action that falls within one of the categories in paragraph (a)(1), (3), or (4) of this section, the contracting officer shall provide prior notice, through agency channels, to the Deputy Director, Defense Procurement and Acquisition Policy (Contract Policy and International Contracting), 3060 Defense Pentagon, Washington, DC 20301-3060.

[75 FR 48277, Aug. 10, 2010]

217.7403 Policy.

DoD policy is that undefinitized contract actions shall—

- (a) Be used only when—
 - (1) The negotiation of a definitive contract action is not possible in sufficient time to meet the Government's requirements; and
 - (2) The Government's interest demands that the contractor be given a binding commitment so that contract performance can begin immediately.
- (b) Be as complete and definite as practicable under the particular circumstances.

217.7404 Limitations.

217.7404-1 Authorization.

The contracting officer shall obtain approval from the head of the contracting activity before—

(a) Entering into a UCA. The request for approval must fully explain the need to begin performance before definitization, including the adverse impact on agency requirements resulting from delays in beginning performance.

(b) Including requirements for non-urgent spare parts and support equipment in a UCA. The request should show that inclusion of the non-urgent items is consistent with good business practices and in the best interest of the United States.

(c) Modifying the scope of a UCA when performance has already begun. The request should show that the modification is consistent with good business practices and in the best interests of the United States.

217.7404-2 Price ceiling.

UCAs shall include a not-to-exceed price.

217.7404-3 Definitization schedule.

(a) UCAs shall contain definitization schedules that provide for definitization by the earlier of—

(1) The date that is 180 days after issuance of the action (this date may be extended but may not exceed the date that is 180 days after the contractor submits a qualifying proposal); or

(2) The date on which the amount of funds obligated under the contract action is equal to more than 50 percent of the not-to-exceed price.

(b) Submission of a qualifying proposal in accordance with the definitization schedule is a material element of the contract. If the contractor does not submit a timely qualifying proposal, the contracting officer may suspend or reduce progress payments under FAR 32.503-6, or take other appropriate action.

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